

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**PETRO INDUSTRIAL SOLUTIONS,
LLC, (PETRO),**

Plaintiff,

vs.

**ISLAND PROJECT AND OPERATING
SERVICES, LLC, (IPOS), VITOL US
HOLDING II, CO., VITOL VIRGIN
ISLANDS CORP. (VVIC), ANDREW
CANNING and OPTIS EUROPE, LTD.,
(OPTIS),**

Defendant.

CASE NO. 1:21-CV-00312

**DEFENDANT ISLAND PROJECT AND OPERATING SERVICES, LLC'S
OPPOSITION TO PLAINTIFF'S MOTION TO AMEND THE FIRST AMENDED
COMPLAINT**

COMES NOW Defendant Island Project and Operating Services, LLC ("IPOS"), by and through its attorneys, Ogletree, Deakins, Nash, Smoak & Stewart, LLC, and hereby opposes Plaintiff Petro Industrial Solutions, LLC's ("Plaintiff") Motion to Amend the First Amended Complaint (the "Motion") [Doc. No. 212]. In support thereof, IPOS states as follows.

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that courts should grant motions to amend "when justice so requires." FED. R. CIV. P. 15(a)(2). However, a court may deny a motion to amend for reasons such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Prejudice to the non-moving party "has long been the

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touchstone for the denial of leave to amend." *Mullin v. Balicki*, 875 F.3d 140, 155 (3d Cir. 2017)

(internal quotation marks omitted).

In the Motion, Plaintiff incorrectly presents to the Court that, "[t]his case is in its infancy with no scheduling order in place to date. There is no prejudice to defendant." Motion at 2-3. This is patently false. The Court issued the operative First Amended Scheduling Order on January 19, 2023 [Doc. No. 136].¹ Furthermore, the case is almost two years old; the fact discovery period concludes in three days; tens of thousands of pages were produced long before Plaintiff's filed the latest Motion to Amend; and the parties have spent countless hours negotiating a schedule to complete fact depositions and participating in fact depositions. Notwithstanding these circumstances, the proposed Amended Complaint contains numerous new paragraphs with sweeping generalizations that misdescribe the record. If allowed, IPOS will be burdened by the need to file yet another responsive pleading in this case.

If this Court nonetheless grants the Motion to Amend, IPOS urges this Court to include conditions that will minimize the prejudice to IPOS (and other parties), including directing that Plaintiff may conduct no further discovery beyond the June 23, 2023 deadline, apart from two depositions of non-party witnesses who were subpoenaed for depositions within the fact discovery deadline which could not be completed because of the unavailability of these non-parties. Of note, this condition would be consistent with Plaintiff's representations that the allegations in the proposed Second Amended Complaint are supported by what has already been learned through discovery in this case, and that Plaintiff "will not need other depositions." Motion at 3.

¹ The deadline set for the completion of factual discovery was extended from June 16, 2023 until June 23, 2023.

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WHEREFORE, IPOS respectfully requests the Court enter an Order **DENYING** the instant Motion. In the event the Motion is granted, IPOS respectfully impose conditions as set forth in this response.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, LLC**

Dated: June 20, 2023

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